HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

C.R. No. 32 of 2002

Smt. Surender Kaur Walia W/o Mehar Singh
Vs.
Kartar Chand S/o Ami Chand Ownar and landlord
House No. A-65

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 28.09.2004

Initial of Judge

In the High Court of Uttaranchal, at Nainital.

Civil Revision No. 32 of 2002

Smt. Surinder Kaur Walia
W/o Mehar Singh,
Teacher, Snatan Dharma
Kanya inter College,
Rudrapur,
R/o House No. A-85,
Owner Kartar Chand, D.C.M. Gali
Rudrapur District U.S. Nagar …Revisionist.

Vs.

1. **Kartar Chand S/o Ami Chand**
   Owner and landlord House No. A-65
   D.C.M. Gali, Rudrapur,
   District U.S. Nagar.

2. **Mohit Kumer Srivastav,**
   S/o A.K. Srivastav,
   Through M/s Kumar Oxygen,
   Rudrappur,
   District U.S. Nagar ..Respondents.

Dated: September 28, 2004.

Hon'ble Rajesh Tandon, J.

Heard Sri Sarvesh Agarwal, learned Counsel for the revisionist and Sri K.N.Joshi, and Sri Rakesh Thapliyal, learned counsel for the respondents.

By the present revision under Section 25 of the Provincial Small Cause Court Act, the applicant has prayed for quashing of the order dated 6.4.2002 passed by the Additional District Judge, Nainital.

Briefly stated the facts of the case are that the plaintiff respondent has field the suit in respect of the house no. A-65 D.C.M. Gali of which he is the landlord. It was stated by the plaintiff that he is the landlord and the applicant is the tenant at the rate of Rs. 800/- per month, apart from the usual taxes. The tenancy was started from February 1992. The plaintiff has submitted that the rent is due from 1-2-01992 to 29-1-1995 to the

extent of Rs. 27, 948/- and toars water tax to the extent of Rs. 5175/- for which a notice was sent on 1.12.1994 but the defendant has failed to pay the rent. The plaintiff has also submitted that a sum of Rs. 1349.40 is also due towards electricity charges. The defendant no.1 has also sublet to defendant no.2 at the rental of Rs. 300/- per month.

The plaintiff therefore has claimed the following reliefs:-

'' कि डिग्री वसूली मु0 34,323/– रुपये बावत बकाया किराया, टैक्स व हर्जाना वादी के पक्ष प्रतिवादी के विरूद्ध पारित करने की कृपा की जाय।

(ख) कि खाली कब्जा जयदाद पिनई प्रतिवादीगणों से वादी को दिलाई जाने की डिग्री वादी के पक्ष में प्रतिवादीगणों के विरूद्व पारित करने की कृपा की जाय।

(ग) कि वाद कालीन सहित अदागयी रकम मु0 34,323/– रुप्ये ब्याज 21.50 वार्षिक की दर भी वादी को प्रतिवादी से वसूलने की डिग्री वादी के पक्ष में प्रतिवादियों के विरूद्व पारित करने की कृपा की जाये।

(घ) कि आइन्दा हर्जाना वेजा इस्तेमाल जायदाद खाली कब्जा जयदाद मु0 80/–रु0 प्रतिदिन की दर से प्रतिवादियो से वसूलने की डिग्री भी वादी के पक्ष में प्रतिवादीयों के विरूद्ध पारित करने की कृपा की जाये।

(च) कि जुमला हर्जा–खर्चा मुकदमा वादी को प्रतिवादियों से दिलाया जाये।

(छ) कि अन्य अनुतोष जो न्यायालय न्याय हित में वादी के प्क्ष में हितकारी समझें वह भी वादी को प्रतिवादियों से दिलाया जाए।''

The suit was contested by the defendant-applicant. He has denied the averments contained in the plaint. The defendant has submitted that the rate of rent is Rs. 300/- per month and he is a tenant since 1987. The subletting was also denied. The defendant has stated in paragraph 10 of the written statement that he has not made any default in the payment of rent. Rent from 15th March 1993 to 15th February 1996 has been deposited in case no. 10/93. It was further submitted that till 15th May 1993, entire rent has been

paid to the petitioner. The defendant has stated that rent from 1-2-92 to 31-1-93, along with the taxes has already been deposited.

Counsel for the applicant has submitted that the defendant has also deposited the rent along with the interest and taxes to the tune of Rs. 5,558/-.

The trial court vide his order dated 6-4-2002 has decreed the suit. The trial court has framed as many as six issues. While deciding issue no.1, finding was recorded that the applicant is a tenant at the rate of Rs. 800/- per month. The finding to that effect is quoted below:-

> ''इस प्रकार प्रतिवादिनी सं0. 1 की ओर से जो साक्ष्य किराये की दर के संदर्भ में दि या गया है वह प्रलेख प्रदर्ष–1 को दृष्टिगत रखते हुए विष्वसनीय नहीं रहता एवं चूंकि प्रल्लेख प्रदर्ष–12 में स्पष्ट रूप से प्रष्नगत भवन का किराया 800 रू0 प्रतिमाह होना दर्ज है और यह प्रलेख इस वाद योजित होने से लगभग तीन वर्ष पूर्व निष्पादिन किया गया है। ऐसी स्थिति में, मैं प्रलेख प्रदर्ष–1 तथा वादी की ओर से प्रस्तुत मौखिक साक्ष्य से यही स्पष्ट होता है कि प्रष्नगत भवन के किराये की दर 800 रू0 प्रतिमाह है और 300 रू0 प्रतिमाह नहीं हैं एवं अवधारित प्रषन सं0.1 का निस्तारण इसी प्रकार किया जाता है।''

Judge Small cause Court has recorded a finding on the basis of evidence on the record i.e. paper no. 62, Ex-1, where the applicant has admitted his signature for the payment of Rs. 800/- per month. The same was also proved from the evidence of P.W.2 and the statement of Harbans Lal. The document 62-Ga was fully proved by the evidence on the record.

No other evidence in rebuttal was produced by the defendant except the Nagr Palika record. The court below has not believed the Nagar Palika record in view of the admitting signature on paper No. 62-Ga. The statement of P.W.3 on paper No. 62-Ga is quoted below:-

> ''यह कहना गलत है कि कोई सुलहनामा पक्षकारों के बीच में नही लिखा गया हो। यह कहना भी गलत है कि किराया 800/– माहवार न तय हुआ हो। कागाज सं0 62 की तीन कापी बनी थी जिसकी

असल थाने दी गइ थी जिसकी प्रतिलिपि 62–ग है। मैनें असल को थाने से पत्रावली में दाखिल करने की कोषिष नहीं की।

हमारा प्रतिवादी से झगडा हुआथा। दोनों ष्क्षों की थाने में रिपोर्ट हुयी थी। मुकदमा कायम नहीं हुआथा। पुलिस घर पर आई थी। पुलिस सडक पर आई थी। थाने की रिपोर्ट जो वादी ने दी थी उसकी कोई कापी पत्रावली में दाखिल नहीं की है। वादी ने जो रिपोर्ट थाने में प्रतिवादी के खिलाफ दी थी उस पर कोई मुकदमा कायम नहीं हुआ था।

जब दुबारा झगडा होने लगा तब पुलिस आ गई। 62 ग पुलिस के सामने नहीं लियाा गया। 62–ग की असल में थाने पर देकर आया था। आज ख ुद कहा कि मैं व सुरेन्दर बालियां भी गई थी। मैं देकर चला अया था सुरेन्दर वालियां से पुलिस ने हस्ताक्षर कराये या नहीं मुझे पता नहीं है। यह कहना गलत है कि प्रतिवादी सुरेन्द्र कौर किसी भी मोहित कुमार श्रीवास्तव नाम के ब्यक्ति को विवादित जायदाद किराये पर दी हो।''

Thus the finding of fact on the rate of rent cannot be a matter of interference under Section 25 of the Provincial Small Cause Courts Act.

While deciding issue no.2 with regard to default, a finding was recorded that the applicant is in arrears of rent and has not paid the rent at the rate of RS. 800/- per month. The amount which has been deposited under Section 30 of the U.P. Act No. 13/72 is also at the rate of Rs. 300/- per month. The relevant findings are quoted bellows:-

''इसके अतिरिक्त प्रतिवादिनी सं0 1 की ओर से न्यायालय के समक्ष जो किराया जमा किया गया है, यह भी 300–00 रु0 प्रतिमाह की दर से ही है। पत्रावली पर इस बात का भी कोई साक्ष्य नहीं है कि वादी व्दारा दिया गया नोटिस के उपरांत प्रतिवादिनी सं01 व्दारा वादी को किराये का कोई भुगतान किया गया हो। इस प्रकार यह स्पष्ट होता है कि प्रतिवादी सं01 व्दारा किराये के भुगतान में चूक की गयी है एवं अवधारित प्रष्न सं0 2 निस्तारण इसी प्रकार किया जाता है।''

While deciding issue no.3 a finding was recorded that notice was duly served upon the defendant-applicant.

Issue no.4 was framed to the effect as to whether the defendant is entitled for protection under Section 20(4) of the Act. The trial court has recorded a finding that the rent was claimed from 1st February 1992 to 15-7-1996 amounting to Rs. 16,050/- when in point of facth, the amount has been deposited to the extent of Rs. 5,558/-.

Issue No.5 was framed to the effect as to whether the premises was sublet to the defendant no.2. The trial Court after considering the evidence on the record has come to the conclusion that the applicant has not sublet the premises to Mohit Kumar Srivastava.

I have perused the order by the Judge Small Cause Court. The court below has recorded a finding of fact that the rate of rent was Rs. 800/- per month. No evidence to the contrary was field by the defendant. However he has paid the rent at the rate of Rs. 300/-. No protection can be claimed by the applicant by paying the rent at the rate of Rs. 300/- per month.

Further the amount having not been deposited under Section 20(4) of the Act, at the agreed rate, no benefit can be extended to the applicant.

Counsel for the respondent has submitted that the rent was due from 1.2.92 to 15.7.96 amounting to Rs. 16,050/-. A clear case of default therefore is made out so as to attract the ingredients of Section 20(4) of the U.P. Act No. 13 of 1972.

Neither the defendant has paid the rent to the plaintiff nor deposited the same either in proceedings U/s 30 or under section 20(4) of the Act at the rate of Rs. 800/- per month so as to get the immunity from eviction.

It is settled law that question with regard to rate of rent is a question of fact and can not be interfered under Section 25 of the Provincial Small Cause Court Act.

In *Sukhanand vs.Ivth Additional District Judge, Bulandshahr and others; Allahabad Rent Cases, 1993(2) page 39 it has been held as under:-*

"As observed by the Apex Court in its decision in the case of Madan and another v. Krishna Kumar Sood, reported in JT

1993 (1) SC 162, 19963 SCFBRC 133, what ever protection the Rent Acts give, they do not give blanket protection for 'non-payment of rent'. This basic minimum requirement has to be complied with by the tenants. The Rent Acts do not contemplate that if one takes a house on rent he could continue to enjoy the same without payment of the rent. The onus to show payment of rent lies on a tenet. I respectfully fully agree with the view taken by the learned Single Judge in the decision of this Court in the case of Mahesh Chandra v. Smt. Angoori Devi, reported in 1989 (1) ARC 540. Further more ;oral testimony is not sufficient in this connection. In a case where the tenant comes forward with the allegations that the rent was paid but no receipt was issued with no explanation whatsoever, for not sending the rent by money order, then, in such a situation, the oral testimony of the tenant in regard to the payment of rent claiming discharge of the liability in this regard can not be demmed to be worth reliance at all.

In its decision in the case of Ram Narain v. Kanhaiya Lal Vishwakarma, reported in 1965 ALJ 989, a Division Bench of this Court had observed while deciding a revision under Section 25 of the Provincial Small Cuase Courts Act, that the Revisional Court has the power to satisfy itself that a decree or order may in any case decided by Court of Small Causes was according to law. The Division Bench, however, emphasized that the Revisional Court is not empowered to took into the evidence of the case and to decide whether finding of fact recorded by the trial court was justified by the evidence on record or not. Further as pointed out by this Court in its decision in the case of Ramesh Chandra Rana v. Shanti Devi and others, reported in 1992 (1) ARC 52, a Court while exercising the power under Section 25 of the Small Cause Courts Act has its own limitation. Relying upon an earlier decision of a Division Bench of this Court in cases of Laxmi Kishore and another v. Har Prasad Shukla, reported in 1981 ARC 545, it was pointed out that the

revisional Court did not possess the jurisdiction to determine an issue of fact itself by entering into evidence and assessing it."

The Apex Court in *Madan Mohan v. Krishan Kumar Sood; 1993 Supreme Court & Full Bench Rent Cases.* 133 has held that the Rent Act does not give blanket protection to the tenant. The observations are quoted below:-

"The question is what is the meaning of the words "amount due" occurring in the third proviso to Clause (i) of sub-section (2) of Section 14 of the Act.

It will be noticed that there is no provision in the Act for giving powers to the Controller to direct payment or deposit of "pendent lite" rent for each month during the pendency of the petition for eviction of the tenant. First proviso to sub-section (2) of Section 14 shows that in order to show payment or valid tender as contemplated by Clause (i) of sub-section (2) of Section 14 by a tenant in default, he has to pay on the first date of hearing the arrear of rent alongwith interest and costs of the application which are to be assessed by he Controller. Surely where a tenant does not avail of the first opportunity and contest the eviction petition on the ground of non-payment of arrears of rent and fails to show that he was not in default and Court finds that the ground has been made out, an order of eviction has to follow. Therefore, it does not stand to reason that such a tenant who contests a claim and fails to avoid order of eviction can still avoid it by mere by paying the rent due till the date of the filing of the application for ejectment The third proviso to Clause (i) of sub-section (2) of Section 14 should also receive an interpretation which will safeguard the rights of both the landlord and tenant. The "amount due" occurring in the third proviso in the context will mean the amount due on and upto the date of the order of eviction. It will take into account not merely the arrears of rent which gave cause of action to file a petition for eviction but also include the rent which accumulated during the pendency of eviction petition as well.

If the tenant has been paying the rent dueing the pendency of the eviction petition to the landlord, the "amount due" will be only arrears which have not been paid. The landlord, as per the scheme of the Section, cannot be worse off vis-à-vis a tenant who was good enough to deposit in Court the arrears of rent together with interest and costs on the first date of hearing. If the interpretation given by the High Court is accepted the result would be that the tenant will be better off by avoiding to pay the arrears of rent with interest and costs on the first date of hearing and prefer suffering order of ejectment after contest and then merely offer the amount due as mentioned in the app0lication for ejectment to avoid eviction. This could not be the intention of the legislature. Surely the rent control Acts, no doubt, are measures to protect tenants from eviction except on certain specified grounds if found established. Once the grounds are made out and subject to any further condition which may be provided in the Act, the tenants would suffer ejectment. Again the protection given in the Acts is not to give licence for continuous litigation and bad blood.

Whatever, protection, Rent Acts give they do not give blanket protection for "non-payment of rent." This basic minimum has to be complied with by the tenants. Rent Acts do not contemplate that if one takes a house on rent , he can continue to enjoy the same without payment of rent."

In Raghubir Prasad vs. Rajendra Kuamr Gurudev and others; 1993 (2) A.R.C. 52 the observations are as under:-

"It should not be lost sight of that in the cases involving the ground of default in payment of the rent as contemplated under Section 20(2) (a) of the Act, the onus to show payment lies on the tenant. Mere oral testimony is not sufficient in this connection for discharging this heavy onus. A tenant alleging that the rent was paid but no receipt was issued by the landlord, in the absence of any explanation whasoever for not sending the rent by postal money order, cannot be deemed to have discharged the heavy burden which stands

cast upon him in this regard. As observed by the Apex Court in its decision in the case of Madam Mohan and another vs. Krishna Kumar Sood, reported in 1993 SCFBRC 133: 1993 (I) JT 162, whatever protection the Rent Acts give they do not give blanket protection for 'non-payment of rent'. This basic minimum has to be complied with by the tenant. The Rent Acts do nto contemplate that if one takes a house on rent he could continue to enjoy the same without the payment of the rent."

The Division Bench of Allahabad High Court in the matter of *Laxmi Kishore and another v. Har Prasad Shukla; 1981 Allahabad Rent Cases, 545 has held that no interference can be made under* Section 25 of the Provincial Small Cause Courts Act. The observations are quoted below:-

" This provision confers a supervisory and not a appellate power. The record can be called for seeing that the decree is according to law . If it is not, the revisional court can pass such order with respect thereto as it may think fit. This power is conditional on the revisional court finding that the decree or order sought to be revised was not according to law. The phrase 'pass such orders with respect thereto as it thinks fit' has come up for consideration before the Supreme Court in several decisions. In Arbind Kuamr Singh v. Nand Kishore Prasad, it was held tht the clause was wide enough to give power to the revisional court to admit additional evidence. In Manganlal Chhotabhai Desi v. Chandrakant Motilal, it was held that the expression authorized the revisional court to issue directions to the parties to the case. In the State of Kerala v. K.M. Charia Abdulla, it was observed that the revisional court has power to pass such orders for rectifying the defect as the revisional court considers, in the circumstances of the case, just and proper.

On the other hand, the phrase 'according to law' occurring in Sec. 25 aforesaid, was considered by the Supreme Court in Hari Shanker v. Rao Girdhari lal Choudhary, it was held that the phrase 'according to law' refers to the decision as a

whole and is not to be equated to error of law or of fact simpliciter. The over all decision must be according to law, i.e. there should be no miscarriage of justice due to a mistake of law. The Court approved the observation of Beaument, C.J. in Bella and Co. Ltd. v. Waman Ramraj, where the learned Chief Justice had given some instances in which the court could interfere under Section 25. They were, where the court had no jurisediction in the matter, where a party had not been given a proper opportunity of being heard, or that the burden of proof had been misplaced on wrong shoulders or where the Court had based ins decision on evidence which should not have been admitted. The court can interfere where it comes to the conclusion that there has not been a proper trial according to law. It was observed-

> *"But in my opinion, that the court ought not to interfere purely because it thinks that possibly the judge who heard the case may have arrived at a conclusion which the High Court would not have arrived at."*

Considering the phrase 'according to law' occurring the first proviso to Section 75(i) of the Provincial Insolvency Act, the Supreme Court in Malini Ayyappa Naicker v. Seth Manghraj Udhavadas firm, observed that while exercising that power, the High Court is by and large bound by the findings of fact reached by the district court. If the legislature intended to confer power on it to re-examine both questions of law and fact, it would have conveyed its intention by appropriate words as has been done under various other statutes. A wrong decision on facts by a competent court is also a decision according to law. The court has no power to be novo examine the findings of fact reached by the trial court. To the same effect are several decisions of this court. In Ram Narain v. Kanhaiya Lal Vishwakarma, a Division Bench held that under Section 25, the revisional court is not empoowerd to look into the evidence of the case and to decide whether a finding of fact arrived at by the court below is justified by the

evidence on record or not. Several Single Judge decisions, 1977 AWC 545 and 1978 AWC (J) 78 are also of the same opinion.

The Court deciding a revision under section 25 of the Provincial Small Cause Courts Act has to satisfy itself that the trial court's decree or order is according to law. Of course, the Revisional Court should keep in mind the Supreme Court's dicltum in Naicker' case (supra) that a wrong decision on fact is also a decision according to law.

If it finds that there is no evidence to sustain a finding on a particular issue of fact, it can ignore that findig. Same will be the case where the finding is based only on inadmissible evidence. In such cases, the court will be justified in deciding the question of fact itself, because the evidence is all one way. No assessment is needed. The Court can also decide the revision if only a question of la or some preliminary point of law, viz, validity of notice is sufficient for its decision.

But, if it finds that a particular finding of fact is vitiated by an error of law, it has a power to pass such order as the justice of the case requires; but it has no jurisdiction to reassess or reappraise the evidence in order to determine an issue of fact for itself. If it cannot dispose of the case adequately without a finding on a particular issue of fact, it should sent the case back after laying down proper guidelines. It cannot enter into the evidence, assess it and determine an issue of fact."

The Apex Court *in M.S. Zahed vs. K. Raghvan; 1999 Supreme Court& Full Bench Rent Cases, page 4* has interpreted the scope of Section 50(1) of the Karnataka Rent Controal Act, 1961 which parimateria under Section 25 of the Small Cause Court Act. The observations are quoted below:-

" In order to consider this question, it will be appropriate to refer to Section 50 of the Act. The said Section reads as under:

***'50. Revision-** (1) The High Court may, at any time call for and examine any order passed or proceeding taken by (the*

court of Small Clauses or the Court of Civil Judge) under this Act or any order passed by the Controller under Sections 14, 15, 16 or 17 for the purpose of satisfying itself as to the legality or correctness of such order or proceeding and may pass suchs order in reference thereto as it thinks fit.

Now a mere look at sub section (1) of Section 50 of the Act shows that the High Court in exercise of its revisional jurisdiction, can consider the question whether the order of the Corut of Small Clauses, with which we are concerned in the present proceedings, was legal or correct. It is obvious that legality of the order of the Small Causes Court which would fall for consideration of the High Court would pertain to errors of law that might have been committed by the said Court. But so far as the correctness is concer, ed wheter the order sought to be revised was court on facts or not will also fall for consideration of the High Court in exercise of its revisional jurisdiction."

In view of the above I find no infirmity in the order passed by the court below. The revision is dismissed.

Both the parties have agreed to avail the time for vacating the premises by 30th of January 2005. However the entire amount shall be paid by 31st of January 2005. The applicant shall give the undertaking within 6 weeks, to vacate the premises. So far as damages for use and occupation are concerned, the same shall be paid in the first week of every month for the current month. In case of default the protection given to him shall be discharged. The arrests shall be paid by 31st of January 2005 in four equal instalments.

(Rajesh Tandon, J.)

ISB